THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

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WRIT PETITION Nos. 3787, 4292 AND 4311 OF 2006

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Dated 29th December, 2006

W.P. No.3787 of 2006

Between:

G.Bhoopathi Reddy

… Petitioner

And

Government of Andhra Pradesh,
represented by the Ex-Officio Secretary,
Consumer Affairs, Food and Civil Supplies
(CB.III) Department, Secretariat Buildings,
Hyderabad and another.

…Respondents.

W.P.No. 4292 of 2006

Between:

L.Ramachenna Reddy and others

…Petitioners

And

Government of Andhra Pradesh

represented by the Ex-Officio Secretary,

Consumer Affairs, Food and Civil Supplies

(CB.III) Department, Secretariat Buildings,

Hyderabad and another.

…Respondents

W.P.No. 4311 of 2006

Between:

P.Srinivas and others.

…Petitioners

And

Government of Andhra Pradesh

represented by the Ex-Officio Secretary,

Consumer Affairs, Food and Civil Supplies

(CB.III) Department, Secretariat Buildings,

Hyderabad and another.

…Respondents

COMMON ORDER:

In all these three writ petitions, as common questions arises for consideration, they are heard together and are being disposed of by this common order.

For the sake convenience in disposal of the cases, I refer to the facts mentioned in Writ Petition No.3787 of 2006, which are similar in the other two cases also.

The petitioner was a retired District Judge Grade-I and appointed as President of the Consumer Disputes Redressal Forum, which is known as a District Forum established under Section 9 of the Consumer Protection Act, 1986. He retired on 31.10.2001 and thereafter, he was given the benefit of Selection Grade from 31.7.2001 to 31.10.2001 vide G.O.Ms.No. 71, Law (LA & J SCF) Department dated

28.6.2004. The petitioner was appointed as the President of District Forum-I, Hyderabad by the first respondent-Government by G.O.Ms.No.58, dated 24.9.2001. The salaries and other allowances and terms and conditions of the President and members of District Forum are governed by the Andhra Pradesh State Consumer Protection Rules, 1987, which are framed in exercise of powers under sub-section (2) of Section 30 of the Consumer Protection Act, 1986. In view of sub-rule 3(1) of the A.P. State Consumer Protection Rules, 1987, while appointing the petitioner as the President of District Forum-I of Hyderabad vide G.O.Ms.No.58, Food, Civil Supplies and Consumer Affairs (CS.III) Department, dated 24.9.2001, it is stated that he shall draw a consolidated honorarium of Rs.10,000/- (Rupees ten thousand only) per month, or last pay drawn minus pension per month, whichever is beneficial to him as laid down in G.O.Ms.No.26, dated 4.4.2000. In the light of the above said appointment orders issued by fixing the honorarium as per G.O.Ms.No.26, dated 4.4.2000, the petitioner was drawing honorarium as per the last drawn salary minus net pension.

However, the Government has amended Rules by issuing G.O.Ms.No.9, dated 1.2.2006 fixing the honorarium for the President of the District Forum, at Rs.18000/- per month if retired District Judge is appointed. Consequent to said orders issued by the Government in G.O.Ms.No.9, dated 1.2.2006, the second respondent – A.P.State Consumer Disputes Redressal Commission, Hyderabad had issued a letter dated 2.2.2006 directing the Presidents of the District Consumer Fora to claim consolidated amount of honorarium of Rs.18000/- per month in terms of G.O.Ms.No.9, dated 1.2.2006. Thereafter, circular instructions were also issued by the second respondent-Commission vide proceedings Roc.No.127.APSCDRC/ACCTS.1/2005 dated 17.2.2006 to the Presidents (Retired District Judges) to draw their salary in pre-revised pay scales and to draw monthly Honorarium in the Revised Pay Scales only after scrutiny and approval of the fixation by the Commission. Therefore, questioning G.O.Ms.No.9, dated 1.2.2006 and the circulars of the second respondent dated 2.2.2006 and 17.2.2006, this writ petition is filed.

It is stated in the affidavit filed in support of the writ petition that when the petitioner was appointed as President of the District Forum, the terms and conditions with regard to honorarium were governed by the rules framed in G.O.Ms.No.26, Food, Civil Supplies and Consumer Affairs (CS.III) dated 4.4.2000 and as such, it is not open for the first respondent Government to vary the terms and conditions of service to their disadvantage during their tenure of office. It is also stated that as per the recommendations of the National Judicial Pay Commission, which was accepted by the Government in G.O.ms.No.113, Law (LA & J SC.F) Department dated 1.11.2004, the salary of the petitioner was revised. In that view of the matter, he is entitled for drawal of salary and arrears by calculating the last drawn salary of the petitioner in the revised pay scales minus net pension, which was being paid to the petitioner. It is further stated that as much as it is simply stated as last drawn salary minus pension, the net pension which was being paid to the petitioner should be deducted from the last drawn salary. It is also stated that taking into account the last drawn salary in the revised pay scales, honorarium was fixed in respect of some of some of the similarly placed Presidents in other Districts and arrears were paid, but, in spite of representation to the respondents, arrears are not being paid to the petitioner.

Counter affidavit is filed on behalf of the respondents. It is stated in the counter affidavit that in the order appointing the petitioner as President, honorarium was fixed at Rs.10,000/- or last pay drawn minus pension, whichever is beneficial to the petitioner and as such, petitioner cannot claim the honorarium basing on the last

salary drawn by him in the revised pay scales. It is further stated that the petitioner and the other similarly placed persons were drawing honorarium consisting of their last salary drawn less net pension leaving the commuted portion in the pre-revised scales. In the counter affidavit, a reference is also made to the clarification issued by the first respondent-Government vide Memo No.113/CS.III(2)/06-1 dated 16.2.2005 clarifying that the retired District Judges, when they are re-employed to work as Presidents in District Consumer Fora in the State, their pay shall be regulated based on the 'last pay less pension' and "pension" means the gross monthly pension payable prior to commutation and last pay drawn means actual pay drawn before his retirement on which original pension was sanctioned. Further, it is stated that as much as the Government has already amended the Rules by issuing G.O.Ms.No.9, dated 1.2.2006 fixing the consolidated honorarium of Rs.18,000/- per month, the Presidents are entitled only for Rs.18,000/- if a retired District Judge is appointed as President and as such, they are entitled to draw the said amount as fixed in G.O.Ms.No.9, dated 1.2.2006.

With regard to the payment of arrears pursuant to the representation of the petitioner, it is stated that questioning the rate of D.A. to be allowed during the fixation of pay in the revised pay scales of Judicial Officers, the State has filed I.A.No.152 of 2004 in W.P.No.1022 of 1989 before the Supreme Court and the same is pending consideration.

Though the petitioner has questioned the validity of G.O.Ms.No.9, dated 1.2.2006, by which, the rules relating to salary and other allowances and the terms and conditions are amended by making amendment to the A.P. State Consumer Protection Rules, 1987, but, however, the learned counsel has confined his argument to the applicability of the said rules to the petitioners who are appointed prior to the amendment of the Rules vide G.O.Ms.No.9, dated 1.2.2006.

It is not in dispute in this case that the petitioner was appointed as a President of District Forum and his salary and allowances are fixed in terms of the A.P. Consumer Protection Rules, 1987 prior to amendment to Rule 3(1) of the said Rules vide G.O.Ms.No.9, dated 1.2.2006. Honorarium prescribed for the President of a District Forum prior to amendment by G.O.Ms.No.9, dated 1.2.2006 was a consolidated amount of Rs.10,000/- per month and if a retired District Judge is appointed on whole time basis, he/she shall receive honorarium of last salary drawn minus pension or Rs.10,000/- whichever is beneficial to him/her. Though in the order appointing the petitioner, it was inadvertently mentioned as last pay drawn minus pension, but, as the petitioner was appointed by fixing honorarium in terms of G.O.Ms.No.26, dated 4.4.2000 the petitioner is entitled to draw honorarium of last salary drawn minus pension or Rs.10,000/- whichever is beneficial to him in terms of sub-rule (1) of Rule 3 of the A.P. State Consumer Protection Rules, 1987 which at the time of the appointment of the petitioner and after amendment by virtue of G.O.Ms.26 dated 4.4.2000 reads thus:

> "3. Salaries and other allowances and terms and conditions of the President and members of District Forum:- (1) The President of the District Consumer Forum shall receive a consolidated amount of honorarium of Rs.10,000/- (Rupees ten thousand only) per month and if a retired District Judge is appointed on whole time basis, shall receive an honorarium of last salary drawn minus pension or Rs.10,000/- (Rupees ten thousand only), whichever is beneficial to him."

On 1.2.2006, G.O.Ms.No.9 came to be issued making amendment to the Andhra Pradesh State Consumer Protection Rules, 1987 to the following effect:

> " The President of the District Consumer shall receive a consolidated amount of

honorarium of Rs.18,000/- (Rupees eighteen thousand only) per month if retired District Judge is appointed."

But, in view of the protection provided under sub-rule (6) of Rule 3 of the A.P.State Consumer Protection Rules, 1987 which reads:

" The terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office."

G.O.Ms.No.9, dated 1.2.2006 by which honorarium of Rs.18,000/- per month is fixed, if retired District Judge is appointed, is not applicable to the Presidents and Members who were appointed prior to the issuance of said G.O. and the same can only be made applicable to those who have been appointed subsequent to 1.2.2006, as any attempt to vary the terms and conditions of the Presidents and Members of the District Fora appointed prior to the issuance of the said G.O. would be contrary to sub-rule (6) of Rule 3.

Coming to the aspect of pension to be deducted from the last drawn salary, there is no reason for claiming honorarium by deducting only the net pension. The word 'pension' used in Rule 3(1) of the A.P. State Consumer Protection Rules, 1987 is a gross pension without apportionment towards commutation. In the case of a pensioner, a portion of whose pension has been commuted before re-employment, the original amount of the pension should be taken into consideration in fixing the total receipts during re-employment or continued employment and not merely the uncommuted pension. Even the commuted portion is nothing but a part of pension paid to the retired employee. As such, there is no valid basis to deduct only net pension leaving the commuted portion of the pension.

As far as the fixation of pay pursuant to the recommendation of the National Judicial Pay Commission and the payment of arrears is concerned, I.A.No.152 of 2004 stated to have been filed by the Government has been ordered by clarifying as to the rate of D.A. to be merged in such fixation. Therefore, the pay of the District Judges has to be refixed in terms of the order passed by the Apex Court and as the pay stands fixed even prior to the date of appointment of the petitioners as Presidents, the petitioners in all these three cases are entitled for the honorarium taking into account the last drawn salary arrived at after fixation in the Revised Pay Scales in terms of the order passed by the Honourable Supreme Court *minus* gross pension i.e. net pension *plus* commuted portion, or, Rs.10,000/- (Rupees ten thousand only), whichever is beneficial to them.

Though the petitioners have claimed arrears of salary through their representation, but their actual entitlement to the same can be arrived at only after fixation of their pay pursuant to the implementation of the orders passed by the Honourable Supreme Court in I.A.No.152 of 2004. Immediately after fixation of the last drawn salary of the petitioners by the competent authority, the second respondent shall work out the honorarium payable to the petitioners in all these writ petitions in terms of the findings of this court in this order and take necessary steps for payment of arrears of salary, if any, by addressing to the first respondent. In case it is found that the petitioners are entitled for arrears of salary on account of honorarium in terms of the order passed by this court, the first respondent shall pay the said amount to the petitioners for the service rendered by them to the various District fora.

In the result, the writ petitions are disposed of in the terms stated supra. No costs.

29--12—2006 **R.SUBHASH REDDY, J.**

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